4.3 BIOLOGICAL RESOURCES

4.3.1 INTRODUCTION

This section identifies existing biological resources, including sensitive species and habitats, at and in the vicinity of the project site, analyzes the potential for implementation of the proposed Gallery at Central Park project to affect those resources, and proposes mitigation measures to reduce those impacts that are determined to be significant.

Information presented in the discussion and analysis that follows was drawn from a reconnaissance-level field survey of the site conducted by H. T. Harvey & Associates biologists (HT Harvey) on February 13, 2008. The survey method involved walking the entire project area to observe all habitats on site. In addition, Walter Levison, Consulting Arborist, conducted a tree survey for the proposed project and presented the findings in a report dated July 20, 2007. The survey reports prepared by HT Harvey and by the certified arborist are included in **Appendix 4.3** of this Draft EIR.

Prior to site surveys, HT Harvey collected and reviewed information from several sources concerning the known distribution of threatened, endangered, or other special-status species that may occur in the area. Sources included biological data contained in the California Natural Diversity Database (CNDDB),[1] the California Native Plant Society's (CNPS) *Inventory of Rare and Endangered Vascular Plants of California*; the list of candidate and federally listed species occurring in Santa Clara County from the US Fish and Wildlife Service's (USFWS) web site (http://www.fws.gov/sacramento/es/spp_list.htm); and literature sources specific to descriptions of the plant and wildlife species occurring in the region. HT Harvey conducted a search of published accounts within the San Jose West US Geological Survey (USGS) quadrangle map in which the project site is located, and for the eight surrounding quadrangles using CNDDB Rarefind reports (2008).

Public comments related to biological resources received in response to the Notice of Preparation for this Draft Environmental Impact Report (EIR) are summarized below.

- A number of commenters raised concerns regarding maintaining and preserving Saratoga Creek's ecological system, specifically the riparian habitat for birds, animals, fish, and insects, and the creek's benefits to the community, such as providing a beautiful natural setting, being a neighborhood attribute, and adding to a sense of community well being.

[1] The CNDDB is a database maintained by the California Department of Fish and Game of information on the location and distribution of animals and plants that are rare, threatened, endangered, or candidate species, or habitats considered to be of high biological value or of limited distribution.

- A number of commenters stated that Saratoga Creek should be protected during and after demolition and construction of the proposed project. Concerns were also expressed regarding potential contamination and increases in sediment and erosion.

- Several commenters asked that the mature trees on site, including the pine trees, be preserved and protected.

- A number of commenters expressed concerns about pests, including rats that might relocate to nearby homes and lawns during project development.

- One commenter's concerns included the potential for the project to interfere with or affect the movement of resident or migratory fish or wildlife species, the native resident or migratory wildlife corridors, and native wildlife nursery sites.

These scoping comments are addressed in the impact analysis presented below.

4.3.2 ENVIRONMENTAL SETTING

4.3.2.1 Project Site Characteristics and Surrounding Uses

The approximately 26-acre project site was previously developed and occupied by a Kaiser Permanente Hospital that has recently relocated to a larger site. Three medical/administrative office buildings remain in operation in the northern corner of the site, north of Kaiser Drive. The entire project site is developed with buildings, parking lots, and landscaping. A mature tree grove is present along the southwestern perimeter of the site opposite Marietta Drive. Canary Island pine (*Pinus canariensis*) trees make up most of the grove's trees.

Saratoga Creek extends along approximately 500 feet of the southeastern boundary of the project site. Currently, the asphalt parking lot extends to the edge of the top of the creek bank, providing no setback from the riparian corridor. The area immediately surrounding the project site is fully developed and consists mainly of residential development.

Plant Communities

Two types of plant communities are present on the project site: developed/landscaped and mixed riparian. These are described below.

Developed and Landscaped. Extensive landscaped areas composed of well-established trees and shrubs are present on site, particularly along the east side of the project site adjacent to Kiely Boulevard and within and around the hospital building, adjacent facilities, and paved parking lots. Additionally, a dense row of numerous mature Canary Island pine trees line a portion of the southern property boundary adjacent to the central parking lot. The majority of the landscaped vegetation consists of non-native trees

and shrubs, including Chinese elm (*Ulmus parviflora*), Japanese scholar tree (*Sophora japonica*), ginko (*Ginko biloba*), camphor (*Cinnamomum camphora*), Modesto ash (*Fraxinus modesto*), southern magnolia (*Magnolia grandiflora*), sweetgum (*Liquidamber styraciflua*), bottlebrush (*Callistemon viminalis*), and oleander (*Nerium oleander*), among others. California native trees have also been planted on the property, including coast live oak (*Quercus agrifolia*), coast redwood (*Sequoia sempervirens*), and Monterey pine (*Pinus radiata*). Native wildlife nursery sites do not exist on this developed site.

Mixed Riparian. The upper banks of the Saratoga Creek channel adjacent to the southeastern property boundary support a somewhat dense and diverse assemblage of relatively young mixed riparian trees and shrubs largely comprising native plant species. The majority of trees range from approximately 10 to 25 feet tall. The trees within the Saratoga Creek habitat form a canopy of riparian vegetation above the asphalt parking areas adjacent to the creek.

Saratoga Creek's riparian corridor extends through the Santa Clara Valley flats for approximately 8 miles. Residential and commercial development and associated flood control activities have heavily disturbed the natural creek habitat over the past 30 to 40 years. The corridor's riparian habitat is now confined to an approximately 75- to 125-foot band of habitat that winds through the valley's urbanized landscape. Development located upstream and downstream along several miles of Saratoga Creek generally provides little to no riparian setback, with the exception of the City of Santa Clara's Central Park located immediately downstream of the project site.

Adjacent to the project site, the creek's riparian corridor exhibits the same heavy disturbance by previous human activity and development. The relatively small, young native trees present along the creek corridor by the project site indicate that the riparian habitat was disturbed within the past 20 to 30 years. The creek banks immediately downstream of the site have been disturbed in the recent past by a flood control project that entailed installing gabions (wire-caged riprap) to stabilize the banks against erosion.

Mixed riparian trees and shrubs within the creek corridor include valley oak (*Quercus lobata*), coast live oak, elderberry (*Sambucus mexicana*), toyon (*Heteromeles arbutifolia*), California lilac (*Ceanothus* sp.), and several non-native pine trees. The present shape of the middle and lower banks of the creek reflects a downward erosion of the creek bottom, referred to as an incised condition. The banks support herbaceous non-native grasses and forbs, such as smilo grass (*Piptatherum miliaceum*) and sweet fennel (*Foeniculum vulgare*). Scattered patches of moisture-loving wetland plant species, including tall umbrella sedge (*Cyperus eragrostis*) and rush (*Juncus* spp.) line portions of the creek bed. Even in a disturbed condition, the riparian corridor provides important habitat for wildlife through the urban landscape.

Common Wildlife

The developed project site has limited value as habitat. Furthermore, there has been a long history of human disturbance and other urban-associated pressures on wildlife populations along and within Saratoga Creek. However, the structure of the riparian habitat within the Saratoga Creek corridor continues to support an increased diversity and density of vertebrate species, particularly birds, within the vicinity of the project site. In addition, landscaped or developed habitats support a variety of relatively common wildlife species that are tolerant of periodic human disturbances. Common species of wildlife discussed below were either observed during the field survey or have the potential to occur based on the quality and extent of available on-site habitat and habitat within the creek's riparian corridor. Special-status wildlife species are discussed in the sections on Federal or State Endangered Species and California Species of Special Concern. The riparian corridor contains suitable foraging and breeding habitat for several functional groups of birds including insectivores (e.g., warblers, flycatchers), seed-eaters (e.g., finches), raptors, and cavity-nesters (e.g., swallows and woodpeckers), in addition to a variety of common amphibians, reptiles, and mammals.

Birds. The European starling (*Sturnus vulgaris*) is a common non-native species that nests in both artificial cavities and natural cavities in trees on site. Non-native house sparrows (*Passer domesticus*) typically nest under eaves or on similar artificial substrates near human habitation. Native bird species commonly found in developed habitats along Saratoga Creek include the house finch (*Carpodacus mexicanus*), northern mockingbird (*Mimus polyglottos*), Anna's hummingbird (*Calypte anna*), and black phoebe (*Sayornis nigricans*). Bewick's wren (*Thryomanes bewickii*), Nuttall's woodpecker (*Picoides nuttallii*), bushtit (*Psaltriparus minimus*), and western scrub jay (*Aphelocoma coerulescens*) are among the numerous species of birds that breed in Saratoga Creek riparian corridor, although none were observed during the field survey. The riparian habitat along Saratoga Creek is also used by migrants and wintering birds.

Raptors, such as red-tailed hawks (*Buteo jamaicensis*) and Cooper's hawks (*Accipiter cooperii*), may nest within the large coast redwoods and Monterey pines on the site and forage in adjacent habitats, including the corridor along Saratoga Creek. A red-tailed hawk was observed during the field survey. One large bird nest, approximately 3 feet in diameter, was observed in a coast redwood (tree tag number 303) along the southern border of the site. Based on the size of the nest, the observed presence of red-tailed hawk on the site, and the observed pellets and squirrel carcass located underneath the nest, HT Harvey determined that this is likely a red-tailed hawk nest that was active during a previous breeding season. Raptors are known to reuse nest structures from previous years, and it is possible that this nest may become active sometime during the breeding season that extends from February through August each year.

Amphibians or Reptiles. No amphibian or reptile species were observed during the field survey. Due to the presence of suitable habitat, several species of common reptiles and amphibians may occur in the riparian corridor along Saratoga Creek. Leaf litter, downed tree branches, and fallen logs are expected to provide cover for the arboreal salamander (*Aneides lugubris*), western toad (*Bufo boreas*), and Pacific treefrog (*Pseudacris regilla*). Several lizards may also occur here, including the western fence lizard (*Sceloporus occidentalis*), western skink (*Eumeces skiltonianus*), and southern alligator lizard (*Gerrhonotus multicarinatus*).

Mammals. Small mammals, such as the California vole (*Microtus californicus*), might use the Saratoga Creek riparian corridor, although none were observed during the field survey. Medium-sized mammals such as the raccoon and striped skunk may also be present in this riparian habitat. Non-natives such as the opossum (*Didelphis virginiana*), eastern fox squirrel (*Sciurus niger*), Norway rat (*Rattus norvegicus*), and feral cat (*Felis catus*) may be present and would harass, compete with, or eat the eggs and young of native birds and small mammals. These potential circumstances reduce the quality of this riparian creek habitat for native riparian wildlife species.

Bats. The seven-story hospital building, other buildings on site, and planted groves of coast redwoods on the site provide breeding and day-roosting habitat for species of bats. The reconnaissance-level survey conducted on the site did not discover evidence (i.e., guano, staining, culled insect parts) of bats associated with these structures and trees. However, given the site habitat characteristics, the potential exists that bats, of either special status or non-special status, may use the structures and trees for breeding and roosting on a year-round basis. The potential presence of bats on site, for either breeding and/or roosting, depends on the characteristics of the specific bat species. For example, the Mexican free-tailed bats (*Tadarida brasiliensis*) would be a likely bat species to be present in the unoccupied buildings at this location. This is a non-special-status species of bat. This species might use the unoccupied buildings for the breeding of their colony. The colony size varies by species. Bats can enter buildings through small openings and can establish colonies within the walls/ceilings of unoccupied buildings. Building demolition specifically and construction in general, has the potential to harm individuals and young if a large colony is present within a building, for example. Bats may be present year-round. The breeding season for species of bats in California extends from mid March through the end of August. For information on special-status bat species, please refer to **subsection Special-Status Resources**.

Special-Status Resources

For the purposes of this EIR, "special status" refers to those resources that meet one or more of the following criteria:

- Plant and wildlife species listed by the US Fish and Wildlife Service (USFWS) or the California Department of Fish and Game (CDFG) as Threatened or Endangered, proposed for listing as Threatened or Endangered, or as a candidate for listing as Threatened or Endangered.
- Plant and wildlife species considered as "Endangered, Rare or Threatened" as defined by Section 15380 of the *2008 California Environmental Quality Act (CEQA) Statutes and Guidelines*.
- Plants included on CNPS Lists 1 or 2. These species are included because the CNPS is an authority recognized by the CDFG on the status of rare plant species in California, and because the criteria for placement on List 1 or List 2 are similar to criteria that CDFG and USFWS use for species considered as candidates for listing or that are already listed as Threatened or Endangered.
- Wildlife species designated as "Species of Special Concern" or "Fully Protected" by the CDFG. Although these species have no legal status under the California Endangered Species Act (CESA), the CDFG recommends their protection as their populations are generally declining and they could be listed as Threatened or Endangered (under CESA) in the future.
- Riparian habitat or other natural communities considered sensitive or regulated by the CDFG.
- Wetlands or other aquatic habitats under the jurisdiction of the US Army Corps of Engineers (USACE).

Special-Status Plant Species

The review of the CNDDB 2008 accounts as well as CNDDB Rarefind reports from the USGS San Jose West quadrangle map and eight surrounding quadrangles identified 34 special-status plant species that have been documented in the project area (i.e., project site and within approximately 5 to 8 miles of the project site).

Based on the field survey, HT Harvey determined that all of the 34 special-status plant species known to occur in the vicinity of the project site are actually absent from the project site, or that evidence exists that the species do not occur in the project vicinity. As these species are not expected to occur on the project site, they are not further discussed in this document. For the list of the 34 special-status plant species determined to be absent from the site refer to the 2008 HT Harvey report in **Appendix 4.3**.

Special-Status Wildlife Species

HT Harvey determined that 21 of the 34 special-status wildlife species are absent from the site. These species are identified in the 2008 HT Harvey report in **Appendix 4.3**, along with an evaluation of their

potential occurrence on the project site. Three reasons exist for the species' absence from the project site: (1) the site is outside the species' range, (2) suitable habitat is not present, or (3) a barrier exists that prevents the species' occurrence. As these species are not expected to reside on or significantly utilize the project site, they are not further discussed in this document.

The database and literature review identified 13 special-status wildlife species that are known to occur in the project area. These species are identified in **Table 4.3-1, Special-Status Wildlife Species Documented in the Project Area**, along with their regulatory status, habitat requirements, and an evaluation of their potential occurrence. These species include fish, amphibians or reptiles, and birds. Additional discussion about each of these 13 special-status wildlife species follows the table.

Federal or State Endangered Species

Central California coast steelhead (*Oncorhynchus mykiss*) has both a **f**ederal and state-listing status of Endangered. The steelhead is an anadromous form of rainbow trout that migrates upstream from the ocean to spawn in late fall or early winter. While steelhead historically occurred in Saratoga Creek and the creek channel adjacent to the project site provides some suitable habitat, they are now absent due to the presence of a drop structure at the downstream confluence of San Thomas Aquino Creek and Saratoga Creek, which prevents the migration of anadromous fish into this reach of Saratoga Creek.

Due to a lack of suitable habitat, the **California red-legged frog** (*Rana draytonii*) and the **California tiger salamander** (*Ambystoma californiense*) are considered absent from the project site and no further evaluation is needed. The **American peregrine falcon** (*Falco peregrinus anatum*) might be a rare forager. However, the site does not provide roosting, breeding, or foraging habitat, and the species is therefore determined to be absent. As these species are not expected to reside on or significantly utilize the project site, they are not further discussed in this document.

Table 4.3-1
Special-Status Wildlife Species Documented in the Project Area

Name	*Status	Habitat	Habitat/Species Present/Absent	Potential for Occurrence On Site
Federal or State Endangered or Threatened Species				
Steelhead California Central Coast ESU (*Oncorhynchus mykiss*)	FT	Cool streams with suitable spawning habitat (gravel substrate free of aquatic vegetation).	HP/SA	Suitable habitat adjacent to site; however drop structure at the confluence of San Thomas Creek and Saratoga Creek prevents migration of anadromous fish into this reach of Saratoga Creek (HRG 1995). Determined to be absent.
California Red-legged Frog (*Rana draytonii*)	FT, CSSC	Streams, freshwater pools, and ponds with overhanging vegetation.	A	No suitable habitat on site; species determined to be extirpated from the area (HTH 1997). Determined to be absent.
California Tiger Salamander *(Ambystoma californiense)*	FT, CSSC	Vernal or temporary pools in annual grasslands or open stages of woodlands, uplands for refugia.	A	No suitable habitat on site. One record from CNDDB within 5 mi; now extirpated (HTH 1999). No records upstream in Saratoga Creek. Determined to be absent.
American Peregrine Falcon (*Falco peregrinus anatum*)	SE, SP	Nests on cliffs or very high bridges and buildings; forages in a variety of habitats.	A	Potential rare forager, but most likely absent from site; no suitable breeding habitat present on site.

Name	*Status	Habitat	Habitat/Species Present/Absent	Potential for Occurrence On Site
California Species of Special Concern				
Western Pond Turtle (*Actinemys marmorata)*	CSSC	Permanent or nearly permanent water in a variety of habitats.	HP	Could occur in Saratoga Creek; no suitable breeding habitat on site.
Cooper's Hawk (*Accipiter cooperii*)	CSSC**	Nests in woodlands; forages in many habitats in winter and migration.	HP	Present year-round and likely breeds along this reach of Saratoga Creek; more common during migration and winter.
Sharp-shinned Hawk (*Accipiter striatus*)	CSSC	Nests in woodlands; forages in many habitats in winter and migration.	A	Potential rare forager, but most likely absent from site; no suitable breeding habitat present on site.
Hoary Bat (*Lasiurus cinereus*)	CSSC	Widespread; roosts in trees. Prefers habitat edges or trees near open habitats for foraging.	HP	Potential roosting habitat on site in groves of redwood trees; no breeding habitat on site.
Townsend's Big-eared Bat *(Corynorhinus townsendii)*	CSSC	Roosts in caves and mine tunnels in a variety of habitats.	HP/SA	Potential roosting and breeding habitat on site in abandoned building; no recent records from Santa Clara Valley floor. Determined to be absent.
Western Red Bat (*Lasiurus blossevillii*)	CSSC	A riparian obligate of large, old growth riparian areas. Migrates long distances and is also found roosting in orchards and other tree species.	HP	May occasionally roost in redwood groves on site; several records of occurrence in project vicinity (MVZ 1988); no breeding habitat on site.
Western Mastiff Bat (*Eumops perotis*)	CSSC	Found in central and south coastal California. Roosts primarily in cliffs or high buildings.	A	No suitable habitat on site; no records from Santa Clara Valley floor. Determined to be absent.
Pallid Bat *(Antrozous pallidus)*	CSSC	Forages over many habitats; roosts in buildings, rocky outcrops and creviced, trees, mines, and caves.	A	Potential rare forager, but most likely absent from site; no suitable roosting or breeding habitat present on site; extirpated from Santa Clara Valley Floor. Determined to be absent.

Name	*Status	Habitat	Habitat/Species Present/Absent	Potential for Occurrence On Site
State Protected Species				
White-tailed Kite *(Elanus leucurus)*	SP	Nests in tall shrubs and trees; forages in grasslands, marshes, and ruderal habitats.	A	No suitable nesting, roosting, or foraging habitat on site. Determined to be absent.

**Absent [A] - no habitat present and no further work needed. Habitat Present/Species Absent [HP/SA] – site conditions consistent with suitable habitat, but for other reasons (e.g., range or habitat quality), the species is not expected to occur. Habitat Present [HP] - habitat is, or may be present, and the species may be present.*

Status: Federal Endangered (FE); Federal Threatened (FT); State Endangered (SE); Fully Protected (SP); State Species of Special Concern (CSSC).

*** Cooper's hawks was recently removed from the list of California Species of Special Concern, and though the species is still protected under the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code, for the purposes of this project, the Cooper's hawk is not considered a special-status species.*

California Species of Special Concern or a Protected Species

Western pond turtle (*Actinemys marmorata*) has a state-listing status as a species of special concern. The western pond turtle occurs in ponds, streams, and other wetland habitats in the Pacific Slope drainages of California and northern Baja California, Mexico. Western pond turtles have been recorded within 5 miles of the site (CNDDB 2008); however, there are no records for this species within Saratoga Creek. The cumulative stressors of urbanization, including release of non-native turtles, predation and harassment by pets and nonnative mammals, capture by humans, degradation of water quality, loss of upland nesting habitat due to development, and the construction of barriers between the creek and nesting areas have reduced western pond turtle populations and reduced the likelihood that a viable population can persist along this reach of Saratoga Creek. Suitable nesting habitat is absent from the project area, and it is extremely unlikely that a western pond turtle would occur on the site. As this species is not expected to reside on or significantly utilize the project site, it is not further discussed in this document.

Townsend's big-eared bat (*Coryhorhinus townsendii*) has a state-listing status as a species of special concern. The Townsend's big-eared bat is a colony-roosting species. Females aggregate in the spring at nursery sites known as maternity colonies to begin their breeding season. That season may extend through the end of August. Females give birth to one young, and females and young show a high fidelity to both their group and their specific roost site. Although Townsend's big-eared bat is usually a cave-dwelling species, many colonies are found in anthropogenic structures, such as the attics of buildings or abandoned mines. Roosting and breeding habitat for this species might be present on the site in the buildings recently vacated. However, there are no recent records for the Santa Clara Valley floor. Therefore, this species is presumed absent from the site. As this species is not expected to reside on or significantly utilize the project site, it is not further discussed in this document.

As shown in **Table 4.3-1**, other wildlife that have a California state-listing status as species of special concern, but are determined to be absent from the site include **sharp-shinned hawk** (*Accipiter striatus*), **western mastiff bat** (*Eumops perotis*), and the **pallid bat** (*Antrozous pallidus*). Several reasons exist for the determination of absence depending upon the species, including no suitable habitat, no breeding habitat, no foraging or roosting habitat, or no records of presence. The **white-tailed kite** (*Elanus leucurus*) is a California State Protected Species. It also is determined to be absent from the site due to a lack of suitable nesting habitat and no foraging or roosting habitat. As these species are not expected to reside on or significantly utilize the project site, they are not further discussed in this document.

Western red bat (*Lasiurus blossevillii)* has a state-listing status as species of special concern. The western red bat is moderately small-sized bat that occurs throughout much of California. This species is often found in forest or woodlands, especially in or adjacent to riparian habitat. Because the species was

recently listed (October 2007), there are no records available in the CNDDB. However, some western red bats overwinter in the San Francisco Bay Area, and they also may overwinter in the lowland riparian areas of the Salinas Valley. There are several records of western red bats occurring within a few miles of the project site and this species may occur along Saratoga Creek. Roosting habitat for western red bats is present on the project site in the redwood groves, and this species could occasionally roost on the site for a short time during migratory periods from mid-August to mid-September. There is no breeding habitat present on the site (HT Harvey 2008).

Hoary bat (*Lasiurus cinereus*) has a state-listing status as a species of special concern. The hoary bat is a large bat that occurs throughout much of California. This species is often found roosting in forest or woodlands from sea level to elevations of 13,200 feet. Roosting habitat for this species is present on the site in the groves of redwood trees, and hoary bats could occasionally roost on the site for a short time during migratory periods from mid-August to mid-September. There is no breeding habitat present on the site (HT Harvey 2008).

Cooper's hawk (*Accipiter cooperii*) was recently removed from state-listing status, and is no longer a species of special concern. However, the species remains protected under the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code. The Cooper's hawk is a medium-sized hawk. Breeding pairs in California usually select nest sites within dense stands of live oak woodland, riparian habitats, or other wooded areas. However, pairs may also nest in sparsely wooded areas and, especially in recent decades, nesting pairs have been found breeding in suburban areas and parks in the San Francisco Bay area and elsewhere. There are many records for Cooper's hawks within 5 miles of the project area. Cooper's hawks could potentially nest within the redwood groves on the project site or in the riparian corridor along Saratoga Creek.

Jurisdictional Wetlands and Drainages

Wetlands and permanent and intermittent drainages, creeks, and streams are generally subject to jurisdiction of the USACE under Section 404 of the Federal Clean Water Act and to the jurisdiction of the Regional Water Quality Control Board (RWQCB) under the Porter-Cologne Act. Streambeds are also potentially subject to regulation by CDFG under Section 1602 of the California Fish and Game Code. Reconnaissance-level field surveys for jurisdictional waters on the project site were conducted on February 13, 2008. Results of the survey concluded that, although the bed and lower banks of Saratoga Creek lie within the jurisdiction of the USACE, the creek is located beyond the boundaries of the project site. Therefore, the project site does not support potentially regulated habitats that would fall under the jurisdiction of the USACE and impacts to regulated habitats is not an issue for the project.

State and Local Jurisdiction of Streams and Riparian Habitat and Trees

State Jurisdiction: Saratoga Creek. The CDFG regulates activities that result in the diversion or obstruction of the natural flow of a stream; substantially change its bed, channel, or bank; or utilize any materials (including vegetation) from the streambed (Sections 1600-1603 of the California Fish and Game Code). Reconnaissance-level field surveys were conducted by HT Harvey within the project area for streams or other waterways potentially under the regulatory jurisdiction of the CDFG. The bed and banks of Saratoga Creek, including the outer canopy of riparian vegetation that hangs over the asphalt parking on the project site, potentially fall within CDFG jurisdiction. Several development activities associated with the creek buffer have the potential to affect the riparian corridor along Saratoga Creek: demolition of the asphalt parking lot, construction of the trail, and new landscaping. Therefore, this component of the project may require a Streambed Alteration Agreement from the CDFG (Section 1600-1603 of Fish and Game Code). A permit application package (called a notification) will be submitted by the applicant to allow CDFG to determine if a Streambed Alteration Agreement is required.

City of Santa Clara Jurisdiction: Land Use Near Streams. In 2007, the City of Santa Clara adopted the *Guidelines & Standards for Land Use Near Streams* (Guidelines & Standards) (City Resolution Number 07-7391) (Santa Clara Valley Water Resources Protection Collaborative 2006). The primary objective of the Guidelines & Standards is to enhance water and watershed resource protection through local agency land use planning and permitting.

Sensitive Plant Communities

The CDFG monitors the distribution, extent, and relative health of all of California's plant communities. The plant communities considered by the CDFG to be of limited distribution and of highest priority are tracked by the CNDDB and are considered to be "sensitive" plant communities. No sensitive plant communities occur on the project site.

Regulated Trees

The City of Santa Clara's *Subdivision and Project Clearance Committee Standard Conditions* (2004) and Chapter 12.35 of the *Santa Clara Municipal Code* regulate the pruning, removal, and planting of trees on City property and public right-of-way. The City has an existing tree ordinance, but it does not apply to private property. However, the City implements a common practice for tree removal and replacement. The common practice includes tree replacement a minimum ratio of 2:1. Compliance with this common practice would be mitigation for the project, and is part of sustainable development practices within the City.

Wildlife Movement Corridors

Wildlife corridors are described as pathways or habitat linkages that connect discrete areas of natural open space otherwise separated or fragmented by topography, changes in vegetation, and other natural or human-induced factors, such as urbanization. The fragmentation of natural habitat creates isolated "islands" of habitat that may not provide sufficient area or resources to accommodate sustainable populations for a number of species, thus adversely affecting both genetic and species diversity. Corridors often partially or largely mitigate the adverse effects of fragmentation by (1) allowing wildlife to move between remaining habitats to replenish depleted populations and increase the gene pool available; (2) providing escape routes from fire, predators, and human disturbances, thus reducing the risk that catastrophic events (such as fire or disease) will result in population or species extinction; and (3) serving as travel paths for individual animals moving throughout their home range in search of food, water, mates, and other needs, or for dispersing juveniles in search of new home ranges.

As previously discussed, the project site is located within an urbanized setting. Residential neighborhoods and streets surround the property on several sides. Therefore, a wildlife corridor is not present on the project site. Saratoga Creek extends along a portion of the project site's southeastern boundary. Saratoga Creek flows through dense residential and commercial development for approximately 4 miles upstream and downstream of the project site. As described previously, evidence exists of disturbance during past years to the riparian habitat of Saratoga Creek. However, even in a disturbed condition, the creek's riparian corridor provides habitat for wildlife through the urban landscape. The vegetation along Saratoga Creek provides foraging and cover habitat for a variety of wildlife species that are expected to use the creek as a movement corridor. As a result, the project site does border a natural open space, Saratoga Creek, that functions as a wildlife movement corridor.

4.3.3 REGULATORY CONSIDERATIONS

The following policies and regulations apply to the biological resources on, or adjacent to, the project site.

4.3.3.1 Federal Regulations

Federal Endangered Species Act

Section 9 of the Endangered Species Act (ESA) prohibits the "take" of federally listed Threatened and Endangered species. The ESA defines take as any action that would harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any Threatened or Endangered species. If a proposed project may result in take of a listed species, and there is no nexus with any other federal agency, an Incidental Take Permit under Section 10(a)(1)(B) of the ESA is required; a Habitat Conservation Plan (HCP) must

accompany this permit application. If there is a nexus with a federal agency, an Incidental Take Permit under Section 7 of the ESA is required. As described above within the Special-Status Resources subsection, wildlife species that fall under the ESA are determined to be absent from the project site. The ESA is not further discussed in this document.

Migratory Bird Treaty Act

The proposed project would be subject to the requirements of the MBTA. This regulation protects all migratory birds and their nests and makes it unlawful to take any migratory bird or its active nests. In addition, the MBTA (16 U.S.C., Sec. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Raptors (e.g., eagles, hawks, and owls), including the Cooper's hawk, and their nests are protected under both this federal law and under state laws and regulations described under **subsection State Regulations**.

4.3.3.2 State Regulations

California Endangered Species Act

Section 2080 of the CESA prohibits the "take" of state-listed Threatened and Endangered species. The CESA defines take as any action that would harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any Threatened or Endangered species. If a proposed project may result in take of a listed species, a permit pursuant to Section 2080 of CESA is required from the CDFG. As described above in the Special-Status Resources subsection, wildlife species that fall under the CESA are determined to be absent from the project site. The CESA is not further discussed in this document.

California Fish and Game Code

Birds. The proposed project would be subject to the requirements of Sections 3503 and 3513 of the California Fish and Game Code under the jurisdiction of CDFG. These regulations protect all native birds and their nests and make it unlawful to take any native bird, its eggs, and/or its active nests. Nesting raptors (birds of prey) are specifically protected under CDFG Code Section 3503.5. Migratory birds are also protected by the State of California. The State Fish and Game Code Section 3503 emulates the MBTA and protects birds' nests and eggs from all forms of take. Disturbance that causes nest abandonment, resulting in the loss of eggs or young, may be considered take by the CDFG.

Bats. Bats and other non-game mammals are protected in California regardless of whether they are common or protected by federal laws. The California State Fish and Game Code Section 4150 states that

all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the code or in accordance with regulations adopted by the commission. Activities resulting in the mortality of non-game mammals (e.g., destruction of an occupied non-breeding bat roost, resulting in the death of bats), or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered take by the CDFG.

4.3.4 IMPACTS AND MITIGATION MEASURES

4.3.4.1 Significance Criteria

The impact of the proposed project on biological resources would be considered significant if it would exceed the following Standards of Significance, in accordance with Appendix G of the *State CEQA Guidelines*: The proposed project would have a significant biological impact if it would

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, Sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service.
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service.
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marsh, vernal pool, coastal, and so forth) through direct removal, filling, hydrological interruption, or other means.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Biological Issues Not Discussed Further

As discussed above, no special-status plant species are expected to occur on the project site due to the absence of suitable habitat. The uses on the site proposed by the project would therefore not affect special-status plant species, reduce the number or restrict the range of an endangered plant, or eliminate a plant community. Therefore no further discussion is necessary.

The project site is not subject to an HCP, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Therefore, because the proposed uses on the site proposed by the project would not impact these types of plans, no further discussion is necessary.

No fish habitat exists on the project site. Saratoga Creek is located beyond the boundaries of the project site. No project-related work would occur within the creek channel. Furthermore, the project includes the creation of a buffer or setback along the project site's southeast border adjacent to Saratoga Creek for protection of the creek. In addition, stormwater from the site would not be discharged directly into Saratoga Creek. All stormwater runoff on the site would be collected through storm drain lines, treated on site in bioswales and other filtration devices, and then would be discharged to the City's existing storm drain in Kaiser Drive. From this point along with runoff from other developed area, the runoff would be conveyed by City storm drains to an outfall on Saratoga Creek. Therefore, the redevelopment and uses on the site proposed by the project would not impact fish habitat and fish population; no further discussion is necessary.

Impact Methodology

Direct impacts of a proposed project on biological resources can take several forms, but typically involve the loss, modification, or disturbance of natural habitat, which in turn directly affects plant and wildlife species dependent on that habitat. Two methods were used to determine areas of potential impact on biological resources: field investigations and literature and database review. These are described in **Subsection 4.3.1, Introduction**. The level of significance of potential impacts on habitat areas is determined by an evaluation of the overall biological value of a habitat area with respect to significance criteria (described above). The relative value of each of the vegetation communities present on site is measured by such factors as disturbance history, biological diversity, its importance to particular plant and wildlife species, its uniqueness or sensitivity status, the surrounding environment, and the presence of special-status resources.

The significance of impacts with respect to direct impacts on individuals or populations of plant and wildlife species takes into consideration the number of individual plants or animals potentially affected, how common or uncommon the species is both on the project site and from a regional perspective, and the sensitivity status if the species is considered of special-status by resource agencies. Impacts are sometimes locally important but not significant according to CEQA, because although they would result in an adverse alteration of existing conditions, they would not substantially diminish, or result in the permanent loss of, an important resource on a population-wide, or region-wide, basis. These factors are evaluated based on the results of the on-site biological surveys and studies, the results of literature and database reviews, and established and recognized ecological and biodiversity theory and assumptions.

Project Impacts and Mitigation Measures

The analysis presented below evaluates environmental impacts that would result from project implementation. For significant or potentially significant impacts, mitigation measures are proposed to avoid or reduce those impacts. These mitigation measures would be monitored pursuant to the Mitigation Monitoring and Reporting Plan that will be adopted for the proposed project.

Impact BIO-1: Project construction might result in the potential direct loss of special-status bat species or indirect impacts due to construction noise. (*Potentially Significant; Less than Significant with Mitigation*)

Protected species of bats such as hoary bat or western red bat, which are nocturnal, may roost on the project site in the redwood trees. These two bat species do not breed on the site, and hence are only expected to be present, if at all, during migratory periods from mid-August to mid-September. The proposed project includes removal of trees from the property. Project construction has the potential to take individuals and young when demolition and construction activities occur. Disturbance may be direct, such as tree removal, or an indirect disturbance, such as noise and increased construction activity in the area. To reduce the potentially significant impact to a less-than-significant level, the project will implement the following mitigation measures.

Mitigation Measure BIO-1a: No more than 30 days in advance of any construction activity, including demolition, asphalt removal, concrete breaking, tree removal, construction, or similarly noisy or intrusive activities that would commence during the migratory season (mid-August to mid-September), a qualified bat biologist shall conduct pre-construction surveys of all potential special-status bat roosting habitat in the vicinity of the planned activity. A qualified bat biologist is defined as a biologist holding a Memorandum of Understanding regarding bats from CDFG. The surveys shall occur prior to issuance of a permit(s) for site preparation, grading, or construction.

Mitigation Measure BIO-1b: If pre-construction surveys indicate that no roosts of special-status bats are present, or that roosts are inactive or potential habitat is unoccupied, no further mitigation is required.

Mitigation Measure BIO-1c: If active roosts are identified during pre-construction surveys, a no-disturbance buffer will be created by the qualified bat biologist around active roosts. The size of the buffer will take into account factors such as the following:

- noise and human disturbance levels at the project site and the roost site at the time of the survey and the noise and disturbance expected during the construction activity;
- distance and amount of vegetation or other screening between the project site and the roost; and

- sensitivity and the behaviors of the bats.

Mitigation Measure BIO-1d: Destruction of roosts of special-status bats and overt interference with roosting activities of special-status bats shall be prohibited.

Mitigation Measure BIO-1e: Pre-construction surveys are not required for demolition or construction activities scheduled to occur during the non-migrating season of special-status bats.

Mitigation Measure BIO-1f: Noisy demolition or construction activities, as described above, (or activities producing similar substantial increases in noise and activity levels in the vicinity) commencing during the non-migrating season and continuing into the migrating season do not require surveys (as it is assumed that any bats taking up roosts would be acclimated to project-related activities already underway).

Mitigation Measure BIO-1g: Bat roosts initiated during demolition or construction activities are presumed to be unaffected by the activity, and a buffer is not necessary.

Significance after Mitigation: Less than significant

Impact BIO-2: Project construction might result in the potential direct loss of active nests of common and migratory bird species or colonies of common bat species (*Potentially Significant; Less than Significant with Mitigation*)

The raptors, many of the migratory bird species, and bats common to the region that might occur on the site, are protected under the MBTA and the State Fish and Game Code. These regulations protect any bird nests with eggs or young and bat colonies and individuals. Nests of migratory birds, raptors, common birds, and bat colonies and bat individuals, might occur throughout the project site in trees, shrubs, and buildings. The nesting season for most birds in Santa Clara County extends from February 1 through August 31. The breeding season for common bat species extends from March 15 through August 31. Project construction has the potential to take individuals and young when demolition and construction activities occur. Disturbance may be direct, such as tree removal and building demolition, or an indirect disturbance, such as noise and increased construction activity in the area. To address potentially significant impacts, the project will implement the following mitigation measures.

Mitigation Measure BIO-2a: The project applicant shall implement the following program prior to construction to avoid impacts to migratory or active raptor nesting birds:

- The project applicant shall retain a qualified ornithologist, approved by the City, to conduct bird nest surveys on the site no more than 15 days prior to demolition, construction, or site preparation

activities occurring during the nesting/breeding season of native bird species, February 1 through August 31.

- The ornithologist shall serve as a construction monitor during those periods when demolition and/or construction activities will occur near active bird nest areas to ensure that no inadvertent impacts will occur.

- If migratory or active raptor bird nests are found and is more than half-completed, a qualified ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest. Typical buffer widths are 250 feet for a nesting raptor and 50 feet for other species.

- At the discretion of the biologist, clearing, demolition, and construction within the fenced area shall be postponed or halted until juveniles have fledged and there is no evidence of a second nesting attempt.

Mitigation Measure BIO-2b: The project applicant shall implement the following program prior to construction to address impacts to common bat species:

- The project applicant shall retain a qualified bat biologist, approved by the City, to conduct bat colony surveys on the site no more than 30 days prior to demolition, construction, or site preparation activities occurring during the colony breeding season of common bat species, March 15 through August 31. A qualified bat biologist is defined as a biologist holding a Memorandum of Understanding regarding bats from CDFG. The bat biologist will examine all walls, ceilings, and attics within the on-site buildings for urine staining and fecal pellets. If sign of a large colony of bats is detected, the bat biologist will determine whether the colony is presently occupying the building and whether the colony is breeding.

- The biologist shall serve as a construction monitor during those periods when demolition and/or construction activities will occur near active bat colonies to ensure that no inadvertent impacts will occur.

- If active maternity colonies of bats are present in the construction zone or within 50 feet of the construction zone, a fence shall be erected a minimum of 50 feet around the colony site. This temporary buffer may be greater depending on the bat species and construction activity, as determined by the biologist.

Mitigation Measure BIO-2c: The project applicant shall remove potential bird nesting and bat colony substrates, such as bushes, trees, grass, and buildings between September 1 and January 31, before the bird nesting and bat colony breeding seasons begin.

Significance after Mitigation: Less than significant

Impact BIO-3: **Construction of the proposed project would result in the permanent removal of trees on site. The project's landscaping plan does not show tree replacement**

at a 2:1 ratio as required by the City's common practice for tree removal and replacement. (*Potentially Significant, Less than Significant with Mitigation*)

Of the 597 existing ornamental landscape trees on the project site, the project would require the removal of approximately 477 trees; the rest of the trees, which are located mainly along the southern edge of the project site, would not be removed. Program viii in the Environmental Quality Element of the Santa Clara General Plan describes the need for the development of a Tree Protection Ordinance. However, the program was never implemented and there is currently no City policy or ordinance in place to protect trees within the City. As a result, the loss of the trees does not exceed any identified threshold of significance. However, the City's implements a standard common practice to replace trees at a minimum ratio of 2:1 for trees that are removed within the City, as determined by the City arborist. Implementation of this practice helps promote sustainability and increases the number of trees in the City over time. The landscaping plan proposed as part of the project does not show that trees would be replaced at a minimum ratio of 2:1. Given this, the City conservatively considers the removal of 477 trees as a potentially significant impact.

Mitigation Measure BIO-3: The project applicant shall replace trees that are removed at a minimum ratio of 2:1 (approximately 1,194) as determined by the City arborist. If the minimum requirement of tree replacement trees cannot be accommodated on site, all remaining trees would be planted off site in proximity to the project site. A tree removal plan shall be prepared and submitted to the Santa Clara Planning Department for review and approval prior to the issuance of a demolition permit.

Significance After Mitigation: Compliance with the City's tree removal and replacement common practice would provide approximately 1,194 tree on or in the proximity of the project site. Additionally the project's landscaping plan includes the planting of various shrubs and groundcover. This would reduce the potentially significant impact to a less-than-significant level.

Impact BIO-4: **Development activities associated with the creek buffer, including the demolition of the asphalt parking lot and construction of the trail, could potentially affect a portion of the riparian corridor along Saratoga Creek. (*Potentially Significant; Less than Significant with Mitigation*)**

The project does include the creation of a buffer or setback along the project site's southeastern border adjacent to Saratoga Creek. The purpose of the setback is to provide protection for the adjacent creek and its riparian habitat. As part of the proposed project, Environmentally Sensitive Area fencing would be installed along the riparian areas of Saratoga Creek to ensure that construction activities do not inadvertently affect those areas. However, in order to create the project's proposed creek buffer or

setback, including a trail, the proposed project would remove the asphalt parking lots on the project site. The asphalt removal would thus occur along the top of creek bank. The canopy of some existing riparian trees rooted at the top of bank extends over the asphalt parking lot. Asphalt removal could inadvertently affect the root systems of the riparian trees that are close to the parking lots, and result in the loss of some riparian trees. To avoid this potentially significant impact, in addition to ESA fencing, the following mitigation measure will be implemented.

Mitigation Measure BIO-4: The demolition of the asphalt parking lots and the construction of the public trail segment immediately adjacent to riparian trees along the top of the creek bank will be monitored by a certified arborist, approved by the City. The applicant shall comply with the arborist's recommended demolition and construction techniques to minimize impacts to riparian vegetation.

Significance after Mitigation: Less than significant.

Impact BIO-5: **The proposed residential development and multi-use trail would not substantially increase human and domestic animal presence within the vicinity of the adjacent Saratoga Creek riparian corridor. (*Less than Significant*)**

The project proposes to construct a public multi-use trail along the top of creek back near the southern boundary of the open space area, adjacent to the Saratoga Creek riparian corridor. Pedestrian and bicycle use of the trail will enable the public passive access along the edge of the existing riparian habitat. In addition to human activity, the occurrence of domestic animals along the creek will likely increase with the presence of both hikers and the residential development. Such changes in accessibility have the potential to disturb wildlife species that utilize the riparian corridor. However, urban development is upstream and downstream of the site, including Central Park, and so the presence of domestic animals and humans along the length of the creek in this area likely already exists. Therefore, the impact is less than significant.

Mitigation Measure: No mitigation measures required.

Impact BIO-6: **The residential uses proposed on the project site would not substantially increase light and glare that could affect the adjacent riparian corridor. (*Less than Significant*)**

As described in this Draft EIR, the project site is located within an urbanized setting. Lighting within the vicinity of the project site and adjacent riparian habitat corridor includes street lighting, lighting on the surrounding residential land uses, and lighting within the nearby Central Park. Nighttime light can

disturb breeding and foraging behavior and can potentially alter breeding cycles of birds, mammals, and nocturnal invertebrates. In addition, light could deter some wildlife species from using Saratoga Creek as a wildlife movement corridor. However, wildlife species that presently utilize the project site or the riparian corridor are habituated to disturbance and high levels of artificial lighting as the current site conditions consist of a lighted parking lot, a hospital building, and several smaller buildings. Conversion of the site into residential housing would not substantially increase lighting levels on the site or within the riparian corridor. Furthermore, the conversion of approximately 1.1 acres of lighted asphalt parking area adjacent to the creek into open space would likely reduce the amount of lighting within the riparian corridor from present conditions. Therefore, the impact would be less than significant.

Mitigation Measure: No mitigation measures required.

Cumulative Impacts and Mitigation Measures

The majority of the City is development, specifically in the vicinity of the project. Given this, most of the sites are development and sensitive biological resources are unlikely to occur on those sites. Similarly, sensitive biological resources are not likely to occur on those sites that have been developed, but are currently vacant. Furthermore, the development associated with the projects listed in **Table 4.0-1, Location of Cumulative Projects** would be subject to CEQA requirements and state laws that protect special status and sensitive biological resources. The proposed project would mitigate any impacts to biological resources. Therefore, the project would make not considerably contribute to any potentially significant cumulative biological impact.

4.3.5 REFERENCES

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